

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF NEWPORT)	
)	
V.)	
)	
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)	
AND)	
KENTON COUNTY WATER DISTRICT NO. 1)	
)	
and)	CASE NO. 89-014
)	
CHARLES ATKINS AND)	
STEVEN J. FRANZEN)	
)	
V.)	
)	
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)	

O R D E R

On August 23, 1989, the Commission granted in part and denied in part the motion of the city of Newport ("Newport") for an Order to cease construction. Newport now petitions for reconsideration and hearing on those portions of the Commission's Order which appear "to permit Kenton County Water District No. 1 to install, construct, and connect the water line and related appurtenances described in the Order." (Petition of Newport, at 1.) For reasons stated herein, the Commission denies Newport's petition but clarifies certain portions of its earlier Order.

Newport had sought an Order from the Commission requiring Campbell County Kentucky Water District ("Campbell County") and Kenton County Water District No. 1 ("Kenton County") to cease all

construction activity on a particular project until obtaining a Certificate of Public Convenience and Necessity. At issue was the construction of 60 linear feet of 30 inch water line to connect a 30 inch water transmission main which Kenton County is currently constructing to a pumping station which Campbell County proposes to build. After conducting an investigation, the Commission found that the proposed water line, if constructed by Kenton County, would be in the ordinary course of business and would not require a certificate.

In its petition, Newport contends that the Commission's Order is unreasonable or unsupported by law or fact in several respects. First, it contends that nothing in the record indicates that Kenton County is the party for whom the connection is installed. We fail to see the relevance of this point. In its original motion, Newport sought an order requiring all construction activity, either by Campbell County or Kenton County, to cease pending the issuance of a Certificate of Public Convenience and Necessity. To rule on this motion, the Commission had to determine what construction by which parties required such a certificate. All possible scenarios had to be considered before a blanket prohibition could be issued.

Newport next argues that, insofar as the usefulness of the proposed line depends upon the construction of a pumping station which has not yet been approved by the Commission, Kenton County's construction of the proposed water line cannot be characterized as in the ordinary course of business. "Certainly, constructing a line for a phantom station does not fall within the parameters of

an extension in the ordinary course of business. . . . [I]f the pumping station is not approved, this decision will result in stranded plant and investment." (Petition of Newport, at 3-4.)

The fact that the pump station does not currently exist, and may never exist, does not take construction of the proposed line out of the ordinary course of business. Most successful businesses, even utilities, often make modest expenditures in the present to expand their services or facilities to avoid much larger expenditures in the future. It may be imprudent not to do so. In the instant case, Campbell County's proposed pumping station, if approved by the Commission, would require a new connection to Kenton County's transmission lines. This connection can be easily made while Kenton County's new water transmission main is installed. Once this main is installed, any connection becomes more expensive, difficult, and disruptive to make. By anticipating future demand and making this connection now, Kenton County avoids these problems. In making such expenditures, however, Kenton County must bear the attendant risk that the proposed Campbell County pumping station will not be constructed. Until the proposed line becomes used and useful, none of its associated expenses, including depreciation expense, may be recovered through the rates charged by Kenton County.

Newport also contends that the Commission, in reaching its decision, mistakenly compared the cost of the proposed water to Kenton County's net utility plant. This cost, it insists, has already been borne by Campbell County. Newport misinterprets the Commission's finding of fact. In its Order of August 23, 1989,

the Commission implicitly assumed that Kenton County would incur the same costs as Campbell County to construct the proposed line and that it would become part of Kenton's utility plant. It is not the Commission's intention that Kenton County become Campbell County's surrogate to evade the requirements of KRS 278.020. If Kenton County constructs the proposed line, it must bear the costs of that construction, not Campbell County.

Newport next argues that the Commission failed to consider the pipe size of the proposed line. "[T]he proposed pipe size is greatly in excess of what is necessary to provide water in the amounts presently purchased on a periodic basis. The connections could only be justified if the determination had been made that Kenton County will be the exclusive supplier of water to Campbell County." (Petition of Newport, at 4.) In light of what the Commission has previously stated about a utility's right to make modest expenditures in the present for future service, we find this argument unconvincing.

Newport's final contention is that a hearing should have been held prior to the issuance of an Order on its motion. No statute requires a hearing be held. Furthermore, Newport never requested a hearing in this matter, either in its motion or in its responses to Campbell County requests for a ruling on the motion. Newport's past failures to request such hearing, the Commission believes, estop it from now raising this issue.

In its petition, Newport has also sought assurances that construction of the proposed pipeline will not be considered as a factor in "making the necessary determinations in regards to the

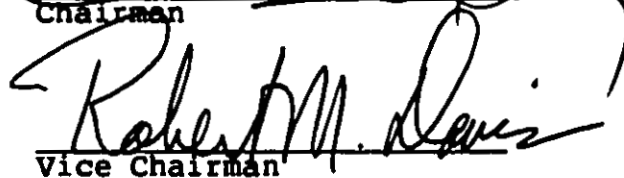
pending cases." (Petition of Newport, at 5.) Such assurances are unnecessary. The Commission considers the cases before it on the water supply for Northern Kentucky to be extremely important and further realizes that millions of dollars hang in the balance. As such, the possible construction of a \$30,000 water line by Kenton County will be given the appropriate weight.

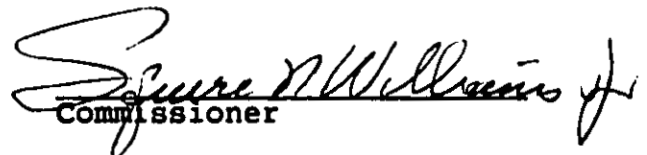
IT IS THEREFORE ORDERED that Newport's motion for reconsideration of the Commission's Order of August 23, 1989 is denied.

Done at Frankfort, Kentucky, this 23rd day of October, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director